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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/549,582	09/19/2005	Matthew D Walker	36-1935	1323
23117 7590 08/03/2009 NIXON & VANDERHYE, PC 901 NORTH GLEBE ROAD, 11TH FLOOR ARLINGTON, VA 22203				
EXAMINER				
HANCE, ROBERT J				
ART UNIT		PAPER NUMBER		
2421				
MAIL DATE		DELIVERY MODE		
08/03/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/549,582

**Applicant(s)**

WALKER ET AL.

**Examiner**

ROBERT HANCE

**Art Unit**

2421

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 06 July 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-3 and 8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/CDC)
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date: \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 07/06/2009 has been entered.

### ***Response to Arguments***

2. Applicant's arguments with respect to claims 1-3 and 8 have been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Rejections - 35 USC § 102***

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1-3 are rejected under 35 U.S.C. 102(e) as being anticipated by Deshpande, US Pub No. 2003/0076858.

**As to claim 1** Deshpande discloses a method of transmitting data over a network having initially undetermined transmission capacity, in which the data comprise

a single first part including no alternatives therein relating to different resolutions and at least two alternative second parts in which the at least two alternative second parts correspond to respective different resolutions, for synchronized presentation at a receiving terminal simultaneously with the first part, said method comprising:

(a) transmitting at least an initial portion of the single first part (Fig. 4: 206, 226 – a base layer is transmitted first. The base layer has a base resolution and does not have alternatives);

(b) receiving data indicative of the available transmission capacity (Fig. 4; Fig. 5; Paragraphs 42-43);

(c) choosing one from among the alternative second parts corresponding to respectively different resolutions, as a function of the data indicative of the available transmission capacity (Fig. 2: the next layer of enhancement layer (42 or 44) is chosen to be sent, depending on which layer was previously sent and whether or not there is enough bandwidth to send the next layer; Fig. 4: 222, 226. These parts are alternative because it is not necessary for them to be sent in order for the video to be viewed); and

(d) transmitting the chosen second part and any remainder of the single first part for synchronized presentation at a receiving terminal simultaneously with the first part (Fig. 4: 226 – the next enhancement layer is sent if enough bandwidth is available);

**As to claim 2** Deshpande discloses a method according to claim 1 including the step of generating said data indicative of the available transmission capacity by

monitoring the transmission by the network of the said initial portion of the single first part (Figs. 4-6; Paragraphs 42-43).

**As to claim 3** Deshpande discloses a method according to claim t in which, in an initial time period of step (d), transmission of a leading part of the chosen second part of an extent corresponding to the extent of the single first part already transmitted is performed preferentially to, or to the exclusion of, further transmission of the first part, thereby causing the transmission of the synchronized second part to catch up with its corresponding first part (Fig. 4: 226; Paragraph 40 - the enhancement layers are sent after the base layer finishes transmission, therefore they are necessarily transmitted preferentially to further transmission of the base layer, which will further allow the enhancement layer to "catch up" with the base layer).

#### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Aharoni et al., US Patent No. 6,014,694.

**As to claim 8** Aharoni discloses: a method for transmitting related audio and video digitized data representing an audio-visual presentation over a communications network having an initially undetermined transmission capacity, wherein the audio data includes only a single version thereof (col. 6 lines 35-37), said method comprising:

initially transmitting data over a communications network (col. 12 lines 32-36 - bandwidth measurement is based on previous transmission of data from server to client. Please note that the claim is not written such that this initially transmitted data need be related to the video data);

determining available transmissions capacity of the communications network based on said initial transmission of data (col. 12 lines 32-36);

selecting one of a plural corresponding but different resolution digitized video data as a function of the determined available transmission capacity; and thereafter continuing to transmit the selected resolution digitized video data over said communications network (col. 7 line 67 – col. 8 line 18);

Aharoni fails to disclose that the data initially transmitted is audio data without corresponding video data.

However, Examiner takes official notice of the fact that transmitting audio without video was known in the art at the time of the invention. For example, streaming audio applications on the Internet were widely used. Therefore it would have been obvious to a skilled artisan to modify the system of Aharoni by enabling the system to transmit audio data as well as video data in order to diversify the system beyond only video. In

this modified system, previously transmitted data is used to measure network bandwidth, and this previously transmitted data can be audio and not video.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ROBERT HANCE whose telephone number is (571)270-5319. The examiner can normally be reached on M-F 8:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John W. Miller can be reached on (571) 272-7353. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/John W. Miller/  
Supervisory Patent Examiner, Art Unit 2421

ROBERT HANCE  
Examiner  
Art Unit 2421

/ROBERT HANCE/

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